INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	2
Argument	5
Conclusion	10
Appendix	11

CITATIONS

Cases:

Fleming v. *Rhodes*, 331 U. S. 100	8
Philadelphia Coke Co. v. *Bowles*, 139 F. 2d 349	8
Taylor v. *Brown*, 137 F. 2d 654	8
United States v. *Shoreline Cooperative Apartments, Inc.*, 338 U. S. 897, rehearing denied, 338 U. S. 939	9
Woods v. *Miller Co.*, 333 U. S. 138	9

Statues and Regulations:

Housing and Rent Act of 1947 (61 Stat. 193)	3
Section 204(b)	3, 7, 11
Housing and Rent Act of 1948 (62 Stat. 93, 50 U.S.C. App., Supp. II, 1881 *et seq.*)	4
Section 204(b)(2)	6, 7, 12
Section 204(b)(3)	13
Housing and Rent Act of 1949 (63 Stat. 18)	4
Section 204(b)(2)	7, 14
Section 204(b)(3)	6, 7, 14
Housing and Rent Act of 1950 (Public Law 574, 81st Cong., 2d Sess., approved June 23, 1950)	9
Controlled Housing Rent Regulation (12 F.R. 4331)	3

Miscellaneous:

H. Rep. 215, 81st Cong., 1st Sess.	8
95 Cong. Rec. 2182, 2860	8

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 197

ALEXANDER PORHOWNIK AND 25 TRINITY CORPORATION, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 15) is unreported. The opinion of the Court of Appeals (R. 36) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 24, 1950 (R. 42), and the order denying rehearing was entered on June 9, 1950 (R. 50). The petition for a writ of certiorari was

filed on July 13, 1950. Jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court below correctly construed the provisions of Sections 204(b)(2) and (3) of the Housing and Rent Act of 1949 as requiring that the maximum rents for petitioners' housing accommodations be reestablished at 1947 rent levels rather than at 1948 decontrolled rates.

2. Whether Section 204(b)(3) of the Housing and Rent Act of 1949 is violative of the due process clause of the Fifth Amendment.

STATUTES INVOLVED

The pertinent provisions of the statutes involved are set forth in the Appendix, *infra,* pp. 11-15).

STATEMENT

The question raised is whether maximum rents initially established under federal rent control and thereafter released from control for a limited period, became reestablished at the initial maximum rates or at higher decontrolled rates. Petitioners' position is that the higher decontrolled rates became the maximum rates when rent control was reestablished; respondent claims that the rents were rolled back to their former levels.

Petitioner 25 Trinity Corporation is the owner of an apartment house located at 21 and 25 Trinity Place, Montclair, New Jersey; petitioner Alex-

ander Porhownik is the President of 25 Trinity Corporation (R. 8, 9). The present case is concerned with two apartment units, Nos. 204 and 402, in that house. On July 1, 1947, the maximum rent established under the Housing and Rent Act of 1947 (61 Stat. 193), hereinafter called "the Act of 1947", for apartment 204 was $100.00 per month. On August 30, 1947, the corporation entered into a statutory lease pursuant to Section 204(b) of the Act of 1947 (*infra*, pp. 11-12)[1] for a rental of $115.00 per month for the period ending December 31, 1948 (R. 33-34). The lease was filed in accordance with the Act of 1947 and the Regulation [2] promulgated thereunder (R. 15). The rental situation as to the second apartment, No. 402, was similar. On August 14, 1947, the corporation entered into and duly filed a statutory lease pursuant to the same provisions of the Act of 1947 thereunder increasing the maximum rent from $60.00 to $69.00 per month, for a period ending December 31, 1948 (R. 32-33). Shortly after December 31, 1947, the two leases

---

[1] These statutory provisions permitted a landlord and tenant voluntarily and in good faith to enter into a written lease for housing accommodations at a rental of not more than 15% above the existing maximum rent if (1) the lease were entered into not later than December 31, 1947, and expired on or after December 31, 1948, and (2) a true and duly executed copy of the lease were filed with the Housing Expediter within 15 days after its execution. Housing accommodations subject to such a "statutory" lease were not subject to maximum rent regulation after December 31, 1947 under the Act as then in effect.

[2] The Controlled Housing Rent Regulation (12 F.R. 4331), also effective July 1, 1947.

were voluntarily terminated (R. 33, 34) and the two units thereupon were no longer subject to the establishment of maximum rents under the Act as it then stood; for all practical purposes, the two units were thereupon decontrolled. In January 1948, the corporation entered into leases with new tenants at a rental of $150.00 per month for apartment 204 and $100.00 per month for apartment 402; the expiration dates of both leases were later than April 1, 1949 (R. 33, 34). Copies of the leases were forwarded to the Housing Expediter, although filing was neither required nor provided for since the apartments were not subject to control (R. 16, 33).

On April 1, 1948, the Act of 1947 was amended (Act of March 30, 1948, 62 Stat. 93). The amendments preserved the validity of statutory leases entered into under the Act of 1947; they provided for reimposition of maximum rents in cases in which such leases were terminated or expired between April 1, 1948 and March 31, 1949, but did not reimpose controls in cases, like that here presented, in which the leases had been terminated between January 1 and March 31, 1948.[3] By the Act of 1949, effective April 1, 1949 (Act of March 30, 1949, 63 Stat. 18), however, Congress adopted the provisions here in issue which

---

[3] The amendments also authorized entry into new statutory leases during 1948. Property so leased would similarly become subject to maximum rent restrictions if the lease was terminated prior to March 31, 1949.

the Housing Expediter and both courts below have construed as reimposing maximum rent restrictions on any housing accommodations with respect to which statutory leases had theretofore expired.

Respondents continued to charge the higher decontrolled rates after April 1, 1949 (R. 4). Since the Housing Expediter was of the opinion that prospective maximum rents (on and after April 1, 1949) for the two housing units here of interest were rolled back to $115.00 per month for apartment 204 (rather than the $150.00 decontrolled rent) and $69.00 per month for apartment 402 (rather than the $100.00 decontrolled rent) suit was instituted against respondents in the United States District Court (Southern District of New York) for injunction and restitution of overcharges (R. 26, 32). The trial court awarded restitution to the tenants of overcharges in rents paid after April 1, 1949 and enjoined petitioners from thereafter charging more than the prescribed maximum rents (R. 20). The United States Court of Appeals for the Second Circuit affirmed (R. 36).

ARGUMENT

The decision of the court below is correct, and there is no conflict of decisions. Moreover the questions which petitioner seeks to raise could at most affect only a very limited class of cases.

1. The court below correctly held that the rentals charged by petitioners after March 31,

1949 were made subject to 1947 rent levels by Section 204(b)(3) of the Act of 1949 (*infra*, p. 14).

The use of so-called 15% (statutory) leases reflects an experiment in decontrol which the Congress employed in the 1947 and 1948 rent-control legislation, but rejected in 1949. Initially, in the Act of 1947, Congress offered landlords the opportunity of obtaining a 15% increase in rentals and decontrol after December 31, 1947, in return for at least one year's lease protection to the tenant. Under this provision rents would normally be held down for at least a year by the terms of the lease; but this restriction might be removed by the fortuitous circumstance that the lease was validly terminated before its expiration date. Such a circumstance took place in the instant case. The 1947 statutory leases for the two described apartments aborted in January 1948 and petitioners were thereby permitted to establish rentals at any amounts desired, with or without leases. The new, 1948, rents at 50% and 66⅔% above the initial maximum rents reflected the free exercise of that right. As the April 1, 1948 amendments to the Act of 1947 permitted petitioners' accommodations to remain free of control,[4] the higher rents could validly continue

[4] This was made evident by the provision that housing accommodations subject to a lease entered into on or before December 31, 1947, remain free of control unless the lease is "hereafter terminated" (i.e., after the effective date of the Act of 1948, April 1, 1948) or expires before March 31, 1949.

to be charged until April 1, 1949. The Act of 1949, however, effected substantial changes in such rental arrangements.

The effect of the 1949 Act on such arrangements is clear and explicit. Section 204(b)(2) of that Act (*infra*, p. 14) provides that where a valid statutory lease was in effect on the effective date of the 1949 Act, the maximum rent shall, until the lease expires or is terminated, be that set forth in the lease. That provision, as the courts below held, has no application here, for petitioners' existing leases were entered into at a time when the units in question were not subject to maximum rent control, and hence those leases were clearly not the statutory leases referred to by this provision.[5] Section 204 (b)(3) (*infra*, p. 14) deals with the situation where a statutory lease was at one time in effect but "has heretofore terminated or expired or hereafter terminates or expires." In such a case, the maximum rent is that which had been prescribed by the statutory lease when it was in effect, with modifications not here

[5] Section 204(b)(2) is limited to cases in which the existing lease was "entered into and filed in accordance with the provisions of this subsection (b) as then in effect". Petitioners' leases, having been entered into in January, 1948, were not entered into "on or before December 31, 1947" as required by Section 204(b) of the 1947 Act, nor did they take effect "on or after the effective date [April 1, 1948] of" the 1948 Act as required by Section 204(b) of that Act. And they plainly did not provide for a rental not in excess of 15 percent of the maximum controlled rent as required by both acts. Since the leases were clearly not entered into pursuant to either the 1947 or 1948 Act, the purported filing of them with the Expediter was, as the court below held, a "nullity" (R. 39).

material. As both courts held, this provision exactly covers the present case. Here a valid statutory lease was entered into and filed in 1947 pursuant to the provisions of the 1947 Act and that lease "has heretofore terminated". Hence the applicable maximum rent is that set forth in the 1947 lease. The result is entirely reasonable and one which Congress plainly intended. See H. Rep. 215, 81st Cong. 1st Sess. p. 5; 95 Cong. Rec. 2182, 2860.

2. The burden of petitioners' argument of unconstitutionality is (1) that Section 204(b)(3) is so unclear as to be fatally defective (Pet. 13-20), and (2) that the Congress may not withdraw an exemption once granted (Pet. 20-21). The foregoing discussion shows, however, that, as the trial court said, "Section 204(b)(3) is direct and explicit and applicable to this case" (R. 19). In the words of the Court of Appeals, there is no "uncertainty in the standard to be applied" (R. 40). And it is plain that the removal of these properties from control by the 1947 Act did not oust Congress of its continuing jurisdiction to reimpose controls prospectively whenever they were deemed needed, nor did the fact that petitioners' 1948 leases were valid when made destroy Congress' power to prescribe lower maximum rentals for the future. *Fleming* v. *Rhodes,* 331 U.S. 100, 107; *Taylor* v. *Brown,* 137 F. 2d 654, 659 (Em. App.); *Philadelphia Coke Co.* v. *Bowles,*

139 F. 2d 349, 356-7 (Em. App.). Petitioners' contention that the Act cannot be sustained as an exercise of a war power is equally without merit. *Woods* v. *Miller Co.*, 333 U.S. 138; *United States* v. *Shoreline Cooperative Apartments, Inc.*, 338 U.S. 897, rehearing denied, 338 U.S. 939.

3. It is extremely unlikely that the questions here raised will be presented again. The issue can arise only as to property with respect to which a statutory lease was entered into during 1947 and was terminated between December 31, 1947 and April 1, 1948. No similar case has been considered by a United States Court of Appeals. Neither the Act of 1949 nor the most recent amendment of that Act (Public Law 574, 81st Cong., 2d Sess. (June 23, 1950)) permit the execution of 15% statutory leases or can cause a situation like the present one to arise.

CONCLUSION

The decision of the court below is clearly correct and further review is not warranted. There is no conflict of decisions. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

ED DUPREE,
General Counsel.
LEON J. LIBEU,
Assistant General Counsel.
BENJAMIN FREIDSON,
Special Litigation Attorney,
Office of the Housing Expediter.

AUGUST, 1950.

APPENDIX

1. Section 204(b) of the Housing and Rent Act of 1947 (61 Stat. 193):

(b) During the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order, make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions of this title: *And provided further,* That in any case in which a landlord and tenant, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with respect to any housing accommodations for which a maximum rent is in effect under this section and such lease takes effect after the effective date of this title and expires on or after December 31, 1948, and if a true and duly executed copy of such lease is filed, within fifteen days after the date of execution of such lease, with the Housing Expediter, the maximum rent for such housing accommodations shall be, as of the date such lease takes effect, that which is mutually agreed between the landlord and

tenant in such lease if it does not represent an increase of more than 15 per centum over the maximum rent which would otherwise apply under this section. In any case in which a maximum rent for any housing accommodations is established pursuant to the provisions of the last proviso above, such maximum rent shall not thereafter be subject to modification by any regulation or order issued under the provisions of this title. No housing accommodations for which a maximum rent is established pursuant to the provisions of the last proviso above shall be subject, after December 31, 1947, to any maximum rent established or maintained under the provisions of this title.

2. Sections 204(b)(2) and (3) of the Housing and Rent Act of 1948 (62 Stat. 93, 50 U.S.C. App., Supp. II, 1894 (b)(2) and (3):

(2) In any case in which a landlord and tenant, on or before December 31, 1947, in accordance with the provisions of this subsection as then in effect, voluntarily entered into a valid written lease in good faith with respect to any housing accommodations, such housing accommodations shall not be subject to any maximum rent established or maintained under the provisions of this title unless such lease is hereafter terminated or expires before March 31, 1949, in which case the maximum rent for such housing accommodations shall, through March 31, 1949, be not in excess of 15 per centum over the maximum rent which in the absence of a lease would be

in effect with respect thereto on the date of enactment of the Housing and Rent Act of 1948: *Provided,* That the landlord and a tenant (including any new tenant) may enter into a new voluntary lease subject to the conditions, specified in paragraph (3) of this subsection, applicable with respect to landlords and tenants who have not heretofore entered into voluntary leases, except that no maximum rent need be in effect on the date of execution of such new lease.

(3) In any case in which a landlord and tenant (including any new tenant) on or before December 31, 1948, voluntarily enter into a valid written lease in good faith (at any rental agreed upon in the lease, but not in excess of 15 per centum over the maximum rent which in the absence of a lease would be in effect with respect thereto on the date of enactment of the Housing and Rent Act of 1948) with respect to any housing accommodations for which a maximum rent is in effect under this section, and such lease takes effect on or after the effective date of the Housing and Rent Act of 1948 and expires on or after December 31, 1949, and if a true and duly executed copy of such lease is filed, within fifteen days after the date of execution of such lease, with the Housing Expediter, such housing accommodations shall not thereafter be subject to any maximum rent established or maintained under the provisions of this title unless such lease is terminated before March 31, 1949. If any such lease is so

terminated the maximum rent (unless a subsequent lease entered into under the provisions of this paragraph is in force) shall be not in excess of 15 per centum over the maximum rent which in the absence of a lease would be in effect with respect thereto on the date of enactment of the Housing and Rent Act of 1948.

3. Sections 204(b)(2) and (3) of the Housing and Rent Act of 1949 (63 Stat. 18):

(2) In any case in which a valid written lease with respect to any housing accommodations was entered into and filed in accordance with the provisions of this subsection (b) as then in effect, and such lease was in effect on the effective date of the Housing and Rent Act of 1949, such housing accommodations shall be subject to the provisions of this title and, until such lease is terminated or expires, the maximum rent for said accommodations shall be the rent set forth in said lease.

(3) In any case in which a valid written lease with respect to any housing accommodations was entered into and filed in accordance with the provisions of this subsection (b) as then in effect, and such lease has heretofore terminated or expired or hereafter terminates or expires, such housing accommodations shall be subject to the provisions of this title and the maximum rent for said accommodations shall be the rent set forth in said lease, plus or minus applicable individual adjustments: *Provided, however,* That if such housing ac-

commodations are in a defense-rental area in which a general increase in maximum rents has been or is hereafter granted, the maximum rent shall be said lease rent plus or minus applicable individual adjustments, or the maximum rent in the absence of a lease, whichever is higher.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1950 898802 81